

STATE v. JAMES.

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A printed list of names and dates is a chattel, but not a "writing containing evidence of any existing debt," within the statutory definition of the subjects of larceny.

Its value, as a statutory subject of larceny, is its market value. To be of the market value of twenty dollars, it must be capable of being sold for that sum at a fairly conducted sale.

INDICTMENT, for larceny of a printed list of names and dates. The persons named were subscribers to a newspaper, and the dates were the periods to which they had paid. The owner made up his account-books from this list once a month.

Solicitor, for the state.

Marston, for the respondent.

BINGHAM, J. The questions reserved were, whether the list was a writing containing evidence of an existing debt, within s. 3, c. 260, Gen. St.; whether, if it was not such a writing, it was a chattel within said section; and if such a chattel, whether evidence was admissible to prove it worth to the owner twenty dollars, although to others it was of no value.

The statute of December, 1812, so far as material, was the same as s. 3, c. 260, of the Gen. St. In *Blanchard v. Fisk*, 2 N. H. 398, 400, it was held, in construing the act of 1812, that, to make the taking of a file of bills larceny, it must contain evidence of unsatisfied debts, or subsisting contracts, covenants, or promises, or of the discharge, payment, or satisfaction of such debts.

Was the list a writing containing evidence of an existing debt, within said section three? It contains no evidence of a contract, promise, or covenant subscribed. If evidence, it must be as a book of accounts; but, as a book of accounts, it is wanting in nearly all the elements required by the rule to make it evidence. *Cummings v. Nichols*, 13 N. H. 420; *Swain v. Cheney*, 41 N. H. 235.

It was a chattel. 2 Russell on Crimes 69, 75, and note; 4 Bl. Com. 234; *Blanchard v. Fisk*, before cited; *Payne v. The People*, 6 Johns. 103; 3 Greenl. Ev., s. 153; *Rex v. Mead*, 4 C. & P. 535; *Regina v. Morris*, 9 C. & P. 347.

Its value as a statutory subject of larceny is its market value; and evidence that it is worth twenty dollars to its owner, and worth nothing to anybody else, does not show its market value to be twenty dollars. To be of the market value of twenty dollars, it must be capable of being sold for that sum at a fairly conducted sale,—at a sale, conducted with reasonable care and diligence in respect to time, place,

and circumstances, for the purpose of obtaining the highest price. *Locke v. State*, 32 N. H. 106; *State v. Ladd*, *id.* 110; *State v. Goodrich*, 46 N. H. 186; *Cocheco v. Strafford*, 51 N. H. 481.

Case discharged.

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MORRILL & a. v. BOSTON & MAINE RAILROAD & a.

Upon a bill in equity for an injunction, authorized by Laws of 1867, c. 8, to restrain directors of railroads from "pooling" certain earnings of the roads, it is not necessary to prove the election of the directors by the corporate records. The testimony of one of the defendants, in a deposition, that he is an acting director, is competent evidence.

Notice to a defendant to produce an original paper is not required where the nature of the action is such as to give him notice that he is charged with the possession of the paper, and that secondary evidence will be offered if he does not produce it.

The reasonableness of a notice to produce a paper at a trial is a matter of fact to be determined at the trial term.

BILL IN EQUITY (reported in 55 N. H. 531), against the Boston & Maine Railroad, the Eastern Railroad, and their directors, for an injunction to prevent the directors carrying out a contract, alleged to have been made by them for "pooling" certain earnings of the roads, in violation of the statute of railroad monopolies (Laws of 1867, c. 8). At the trial in the circuit court, questions were raised concerning the competency of evidence.

The plaintiffs offered to prove by the deposition of Stevens, one of the defendants, that he was a director of the Boston & Maine Railroad.

The written contract set up in the bill being called for by the plaintiffs and not produced by the defendants, the plaintiffs offered to prove its existence and terms by evidence of oral declarations made by the directors during the continuance of the contract.

The plaintiffs, on Saturday, gave the defendants notice to produce, on the next Monday, a certain written report in the defendants' possession; and it not being produced on Monday, the plaintiffs offered secondary evidence of its contents.

Towle, Leavitt, and Frink, for the plaintiffs.

Hatch, for the defendants.

ALLEN, J. The plaintiffs seek for an injunction to prevent a practical consolidation (total or partial) of "rival and competing lines" of